

CONNECTICUT LEGAL RIGHTS PROJECT

P.O. Box 351, SILVER STREET, MIDDLETOWN, CT 06457
TELEPHONE (860) 262-5030 · FAX (860) 262-5035

Committee on Aging Public Hearing March 3, 2015
Testimony of Kathleen M. Flaherty, Associate Executive Director

CONNECTICUT LEGAL RIGHTS PROJECT OPPOSES RAISED BILL 1004 "AN ACT CONCERNING SENIOR HOUSING"

Senator Flexer, Representative Serra and members of the committee:

The Connecticut Legal Rights Project (CLRP) is a statewide non-profit organization that provides legal services to low-income adults with serious mental health conditions on matters related to their civil rights. We support initiatives that integrate individuals into the community.

Housing cases represent nearly 40% of CLRP's caseload. The language in this raised bill is redundant and unnecessary. Virtually every component of the bill is a reiteration of, or a reference to, an existing statute.

I. The only exception is section 4: the very problematic mandatory denial of a stay pending appeal for tenants of state-funded subsidized housing.

CLRP opposes Section 4 of this bill because it denies a stay pending appeal to both elderly and disabled tenants who reside in this housing who have a judgment entered against them in an eviction case for particular reasons. No other tenant in **any** other housing in the state, public or private, would be subject to this requirement. Like the rest of the bill, this provision is not necessary, is probably discriminatory under several laws, and it potentially imposes terrible hardships on tenants of state funded housing, elderly and disabled alike. It is unnecessary and redundant because:

- The existing statute already gives the judge discretion to deny a stay pending appeal if it appears to the judge that the appeal was taken "solely for the purpose of delay" or if the defendant fails to post a required bond.ⁱ
- Appeals in summary process cases are fairly rare. There is no reason to deny a stay to tenants in state subsidized housing.
- Even without an appeal, the judge has discretion to grant a stay of execution of up to 6 months depending on the reason for the eviction,ⁱⁱ **but not for** (1) nonpayment of rent, (2) nuisance committed or permitted by the defendant, (3) the use of or permitting the use of the premises for an immoral or illegal purpose, or never had a right or privilege (squatters). C.G.S. Sec. 47a-37.
- Someone who is evicted and brought a successful appeal would only be entitled to the "next available unit" - which may only be available months or years in the future.

- At least as often as there are people who are not evicted fast enough for some people, there are others, frequently people who are disabled (including elderly and disabled), who are not well versed in the eviction law and are not able to access legal assistance or other services quickly enough to prevent an eviction. The Summary Process statute is designed to move the process quickly while preserving the rights of tenants. Because of short deadlines, unwary tenants can be evicted within a matter of weeks.ⁱⁱⁱ Both sets of people will be captured by this bill and suffer for its singling out of tenants of state funded housing to be denied the same rights to a stay as other tenants.
- State-supported housing is intended to benefit the most vulnerable members of our communities. Similar housing that is funded by the federal government has additional safeguards to prevent premature eviction or eviction without adequate grounds. It only makes sense for state supported housing to operate under the same procedures rather than become the harshest of landlords.
- The language of Section 4, as written, may even serve to deny certain tenants evicted from that housing the 5 day automatic stay of execution that gives them time to request a judicial stay. Housing courts are courts of equity. Trial judges have discretion in deciding the length of the stay to be granted after an eviction is ordered. A longer stay is only available to certain tenants, and is not available (under existing law) to those tenants who have used the premises for the sale of drugs or “immoral purposes.”

II. Section 1 of this bill seeks a report from the Commissioner of Housing and CHFA, and tracks Bill 888, raised by the Committee on Housing, which CLRP opposed in our testimony before that committee on February 17, 2015. Likewise, we oppose section 1 of Raised Bill 1004 because, as written, it is based on a premise which is fundamentally unsound and will violate the rights of tenants under the Connecticut Constitution and state and federal fair housing laws by discriminating against people based on age and disability.

- **Our major concern is that the bill assumes displacement of tenants due to units being reserved in state funded subsidized housing for either the elderly or younger tenants with disabilities.**
- **There is no provision in state law for such a move, and although there are several proposed bills this session to limit access to such housing for people with disabilities, all of those bills violate state law and the state constitution which explicitly prohibits discrimination based on disability.^{iv}**
- **People of all ages, all abilities and all family composition should live in communities with a variety of people. CLRP opposes any move to separate or segregate people.**
- We again note that this legislation is unnecessary and that existing statute (Conn. Gen. Stat. Sec 8-68) already provides authority to conduct a study as suggested in the proposed bill. Probably the only change necessary would be to change (Commissioner

of) “Economic and Community Development” to “Housing” as has been done in many other places in the General Statutes. ^v

- We question the need for a study when it appears from the testimony before the Housing Committee that much of the impetus for the push to move out people with disabilities is financial—that older people who have worked and retired have higher income, and thus pay higher rent, than younger people on disability income.
- However if a study will occur:
 - Such a study needs to be complete. In order to determine the real impact of “negative incidents between elderly tenants and younger people with disabilities,” the study must also look at negative incidents in total, irrespective of the participants in the incidents as well as the total number of evictions from these properties and the reasons for those evictions. Looking at issues and evictions only of people with disabilities, out of context, will not give an accurate picture of the situation. Individual reports about a particular person or a particular situation do not provide the basis for determining the true extent of the problem in the context of all the issues among all the neighbors in state subsidized housing projects.
 - This bill brings CHFA to the table for the study. Raised Bill 888 brought the Commissioner of Housing and the Commissioner of the Department of Mental Health and Addiction Services to the table. EVERYONE involved with housing and helping to meet the needs of people who live in this housing should be at the table – DOH, CHFA, DMHAS, DDS, BRS, and DSS.

III. This bill redefines and limits the term “elderly” to people who are 62 years of age and over. For more than 50 years, “elderly” housing in Connecticut has had the stated purpose of serving the needs of both people with disabilities and older adults. **The statute has included people who have been found disabled by a federal agency in the term “elderly” for the purposes of state funded public housing since 1962.**

Designating such housing for either older people or people with disabilities promotes segregation based on age and disability in violation of rights protected under the state constitution, fair housing laws, and the Americans with Disabilities Act.

IV. CLRP opposes Sections 2 and 3 of this bill because they are not necessary and will cause confusion and misinterpretation.

- The summary process statute already permits a housing provider to evict a tenant for each of the reasons this bill purports to add.
- The language in existing statute 8-116c that states “nothing in this section shall be construed to limit the remedies of any such [landlord] under Chapter 832” refers explicitly to the summary process (eviction) statutes (C.G.S. Secs. 47a-23 et seq.)
- Those statutes ALREADY state that any tenant can be evicted for material noncompliance with the rental agreement when that noncompliance materially affects the health and safety of other tenants or materially affects the physical condition of the premises, as well as serious nuisance.

- The new provision, offered in Sec. 3 of the raised bill, purports to amend C.G.S. 47a-23c(b) (the good cause eviction statute which protects elderly tenants and those with disabilities) by adding a clause (H) which simply repeats the current clause (C). The statutes referenced in clause C (Material noncompliance with section 47a-11 or subsection (b) of section 21-82) explicitly include serious nuisance as defined in Sec. 47a-15:

“Serious nuisance” is defined in section 47a-15 means (A) inflicting bodily harm upon another tenant or the landlord or threatening to inflict such harm with the present ability to effect the harm and under circumstances which would lead a reasonable person to believe that such threat will be carried out, (B) substantial and wilful destruction of part of the dwelling unit or premises, (C) conduct which presents an immediate and serious danger to the safety of other tenants or the landlord, or (D) using the premises or allowing the premises to be used for prostitution or the illegal sale of drugs or, in the case of a housing authority, using any area within fifteen hundred feet of any housing authority property in which the tenant resides for the illegal sale of drugs.” 47a-11 (g) and (h) state: “(g) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors’ peaceful enjoyment of the premises or constitute a nuisance, as defined in section 47a-32, or a serious nuisance, as defined in section 47a-15; and (h) if judgment has entered against a member of the tenant’s household pursuant to subsection (c) of section 47a-26h for serious nuisance by using the premises for the illegal sale of drugs, not permit such person to resume occupancy of the dwelling unit, except with the consent of the landlord.”

- ALL of these acts are ALREADY lease violations that “materially affect health and safety of other tenants or materially affects the physical condition of the premises” and are a ground for eviction under existing law. **It is not clear what the legislature intends by repeating the summary process statutes here.** Public housing authorities, state funded landlords and their lawyers are aware of the statutory grounds for eviction. Repeating them in another statute does not enhance or strengthen existing law. This section of the law would accomplish nothing other than adding confusion and requiring people to cross reference two other statutes. There is no benefit to repeating the grounds for eviction in another part of the general statutes and it will cause problems of interpretation at some point in the future.^{vi}

V. CLRP opposes Sec. 2. There is no need to expedite summary process cases further.

- Summary process is already expedited. The “summary” in summary process means swift, rapid, immediate, even peremptory.

- Pleadings in these cases occur every three days, in contrast to those in other civil cases which proceed every 30 days.^{vii}
- Specialized housing courts exist in Hartford, New Britain, New Haven, Fairfield, Waterbury and Stamford-Norwalk judicial districts. Even in areas without specialized housing courts, the cases are scheduled separately from other civil cases and move quickly through the system.
- The Biennial Report to the General Assembly of the Connecticut Advisory Council on Housing Matters set out the disposition time for court processing of summary process cases in its Appendix C-3, which is attached. **The median disposition time for all cases from July 1, 2013 to June 30, 2014 was 19 days**, ranging from a high of 30 days in New Britain (there is only housing court there one day a week) to the low of 14 days in Waterbury. It breaks out contested cases (cases where the defendant files an appearance): **The median for all contested cases was 24 days, with a range from 19 days to 32 days.** In the realm of the slow wheels of justice, this is as expedited as anyone will ever see!

For all these reasons **CLRP opposes this bill and urges you not to move it forward.**

ⁱ **CT Practice Book Section 61-11.** The decision of the trial court is automatically stayed upon the filing of the appeal. A party may file a Motion to Terminate Stay with trial court on the grounds that either a) the appeal was taken solely for delay or b) “the administration of justice so requires”. The stay may be terminated sua sponte without a hearing.

ⁱⁱ **Sec. 47a-39. Court may grant stay of execution.** Upon the hearing on such application in the Superior Court the judgment of the trial court shall stand, but upon such hearing if it appears that the premises, judgment for possession or occupancy of which has been rendered, are used for dwelling purposes and are not excluded by the provisions of section 47a-36; that the applicant cannot secure suitable premises for himself and his family elsewhere within the city or town or in a city or town adjacent thereto in a neighborhood reasonably comparable to that in which the premises occupied by him are situated; that he has used due diligence and reasonable effort to secure other premises; that his application is made in good faith, and that he will abide by and comply with such terms and provisions as the court may prescribe, the court may grant a stay of execution for a period or for periods in the aggregate not exceeding six months from the date of the judgment in the summary process action upon such conditions and terms as appear fair and equitable, except that such stay of execution shall not exceed three months in the aggregate if the reason for the judgment against the defendant was nonpayment of rent; provided in the case of an applicant who is a resident in a mobile manufactured home park and owns his own unit and has received notice pursuant to subparagraph (E) of subdivision (1) of subsection (b) of section 21-80 or an applicant who is a conversion tenant, as defined in section 47-283, or who at the time of conversion was residing in a dwelling unit in a building or on property which has been declared a conversion

condominium, at the end of such six-month period the court may extend such stay of execution under the same or different conditions and terms for an additional period not exceeding nine months taking into consideration the age of the applicant, the size of the applicant's family, the length of time of such applicant's tenancy and the availability of suitable alternative housing. Such extended stay may be reviewed every two months. The court shall consider all the circumstances of the case, the equities involved and whether any undue hardship would result to either party. Such conditions and terms may include the requirement that the applicant shall pay to the plaintiff in the summary process action such amount in such installments from time to time and in such manner as the court may direct, for the use and occupancy of the premises for such period of the stay, at the rate to which he was liable as rent for the month immediately prior to the expiration of his term or tenancy, if any, and any assessment for current common expenses not already included in the rent as provided in subsection (b) of section 47-76, if any, or such sum as may be determined by the court to be reasonable for such use and occupancy. Such payment shall also include all rent unpaid prior to the period of such stay.

ⁱⁱⁱ **Sec. 17-30. Summary Process; Default and Judgment for Failure to Appear or Plead** (a) If the defendant in a summary process action does not appear within two days after the return day and a motion for judgment for failure to appear and the notice to quit signed by the plaintiff or plaintiff's attorney and endorsed, with his or her doings thereon, by the proper officer or indifferent person who served such notice to quit is filed with the clerk, the judicial authority shall, not later than the first court day after the filing of such motion, enter judgment that the plaintiff recover possession or occupancy of the premises with costs, and execution shall issue subject to the statutory provisions. □ (b) If the defendant in a summary process action appears but does not plead within two days after the return day or within three days after the filing of the preceding pleading or motion, the plaintiff may file a motion for judgment for failure to plead, served in accordance with Sections 10-12 through 10-17. If the defendant fails to plead within three days after receipt of such motion by the clerk, the judicial authority shall forthwith enter judgment that the plaintiff recover possession or occupancy with costs.
(P.B. 1978-1997, Sec. 362A.) (Amended June 26, 2000, to take effect Jan. 1, 2001; amended June 20, 2005, to take effect Jan. 1, 2006.)

^{iv} **ARTICLE XXI of the Amendments of the Connecticut State Constitution**, adopted November 28, 1984, reads as follows:

"Article fifth of the amendments to the constitution is amended to read as follows: No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability."

This language means that people living with physical or mental disabilities are a protected class under the state constitution, and any change to this protection cannot be

removed by simply enacting a new statute – a proposal to amend the constitution pursuant to Article XII (as amended by Article VI of the amendments to the Constitution) is required.

^v **Sec. 8-68. Housing research and studies.** In addition to its other powers, any housing authority, within its area of operation, or the Commissioner of Economic and Community Development may undertake and carry out studies and analyses of the housing needs and of the meeting of such needs, including data with respect to population and family groups and the distribution thereof according to income groups, the amount and quality of available housing and its distribution according to rentals and sale prices, employment, wages and other factors affecting the local housing needs and the meeting thereof; may make the results of such studies and analyses available to the public and the building, housing and supply industries, and may engage in research and disseminate information on the subject of housing.

^{vi} **CT Supreme Court on Statutory Construction**

“It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions.... [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous.... Because [e]very word and phrase [of a statute] is presumed to have meaning ... [a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant.” “[t]he General Assembly is always presumed to know all the existing statutes and the effect that its action or non-action will have upon any one of them”;

^{vii} **Sec. 10-8. Time to Plead**

Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of thirty days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the time period shall be fifteen days. The filing of interrogatories or requests for discovery shall not suspend the time requirements of this section unless upon motion of either party the judicial authority shall find that there is good cause to suspend such time requirements.
(P.B. 1978-1997, Sec. 114.) (Amended June 14, 2013, to take effect Jan. 1, 2014.)

APPENDIX C-3

Disposition time for court processing of summary process cases

July 1, 2013 and June 30, 2014

From the return day to the date of final judgment

	<u>Hartford</u>	<u>New Britain</u>	<u>New Haven</u>	<u>Waterbury</u>	<u>Bridgeport</u>	<u>Norwalk</u>	<u>All locations</u>
<u>All cases (including defaults for failure to appear)</u>							
<u>Median</u>	18 days	30 days	19 days	14 days	21 days	24 days	19 days
<u>Per cent disposed of within:</u>							
30 days	79.0%	50.1%	77.9%	86.1%	73.7%	64.6%	74.6%
60 days	94.5%	88.4%	93.6%	95.8%	92.7%	87.0%	93.0%
90 days	97.9%	95.9%	96.9%	98.4%	97.3%	93.6%	97.1%
<u>Default rate:</u>							
	30.5%	29.0%	30.4%	47.8%	57.0%	49.5%	38.8%
<u>Contested cases</u>							
<u>Median</u>	21 days	32 days	23 days	19 days	24 days	29 days	24 days
<u>Per cent disposed of within:</u>							
30 days	73.4%	38.3%	72.7%	80.4%	68.8%	51.4%	67.5%
60 days	93.2%	87.2%	92.7%	94.8%	90.8%	80.9%	91.5%
90 days	97.3%	95.5%	96.5%	97.6%	96.6%	90.8%	96.4%

Note: "Contested cases" are those in which the defendant files an appearance.